

# **Board of Vocational Nursing and Psychiatric Technicians**

## ***INITIAL STATEMENT OF REASONS***

**Hearing Date:** January 2, 2008

**Subject Matter of Proposed Regulations:**

Rehabilitation Criteria; Disciplinary Guidelines

**Sections Affected:**

Vocational Nursing (VN): Amend Sections 2522 and 2524  
Repeal Section 2522.5

Psychiatric Technician (PT): Amend Sections 2579 and 2579.10  
Repeal Section 2579.1

**1. REHABILITATION CRITERIA**

**Amend Sections 2522 (VN) and 2579 (PT) and Repeal Sections 2522.5 (VN) and 2579.1 (PT)**

**Specific Purpose**

The proposed regulations would update the Board's criteria to evaluate the rehabilitation of a person when considering the denial, suspension or revocation of a license and ensure consistency with the Board's Disciplinary Guidelines. The proposed regulations make the criteria the same for denial of licensure under Business and Professions Code Section 480, the suspension or revocation of a license when a licensee has been convicted of a crime, or a petition for reinstatement of a license. The proposal consolidates regulation section 2522.5 (VN) with section 2522 (VN) and section 2579.1 (PT) with section 2579 (PT).

The proposed regulations removes "evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration" because this evidence is considered within the context of the overall disciplinary record or criminal actions taken which are included in the proposed amendment. Other changes are proposed for clarifying purposes.

**Factual Basis**

In accordance with the Business and Professions Code (Code), the protection of the health, safety, and welfare of California consumers is the Board's highest priority. The Board is authorized to investigate the criminal conviction history of applicants, subsequent arrests, allegations of unprofessional conduct, unsafe and incompetent practice by licensed vocational nurses and psychiatric technicians. If allegations are substantiated, the Board is authorized to discipline licensees and applicants who may jeopardize the health, safety and welfare of the consumer.

Additionally, section 482 of the Code requires the Board to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension or revocation of a license. Existing regulations relative to rehabilitation criteria are outdated and need to be amended. This proposal would update the Board's criteria for rehabilitation and provide consistency between the rehabilitation criteria and factors to be considered contained in the Board's Disciplinary Guidelines.

## **2. DISCIPLINARY GUIDELINES**

### **Amend Sections 2524 (VN) and 2579.10 (PT)**

#### **Specific Purpose**

The Board's Disciplinary Guidelines (Guidelines), revised January 1, 2000, were adopted as regulations effective July 1, 2000. In keeping with its mandate and strategic plan to protect the public interest, the Guidelines need to be amended to reflect current practice relative to recommended discipline for administrative disciplinary actions and to ensure consistency and clarity.

Pursuant to Government Code Section 11425.50(e), a penalty in an administrative disciplinary action may not be based on a guideline, criterion, bulletin, manual, instruction, order, standard of general application or other rule unless it has been adopted as a regulation. This proposal will amend Sections 2524 (VN) and 2579.10 (PT) to reference the Guidelines that were more recently revised on June 19, 2007.

#### **Factual Basis**

In accordance with the Code, the protection of the health, safety, and welfare of California consumers is the Board's highest priority. The Board is authorized to investigate the criminal conviction history of applicants, subsequent arrests, allegations of unprofessional conduct, unsafe and incompetent practice by licensed vocational nurses and psychiatric technicians. If allegations are substantiated, the Board is authorized to discipline licensees and applicants who may jeopardize the health, safety and welfare of the consumer.

The Board established its Guidelines to facilitate uniformity of disciplinary orders and to ensure that its disciplinary policies are known. The guidelines are intended for use by individuals involved in disciplinary proceedings against vocational nurse and psychiatric technician licensees or applicants, including administrative law judges and attorneys, as well as the Board members who review proposed decisions and stipulations and have ultimate authority to make final decisions.

The proposed amendments will update and clarify the Board's recommended disciplinary orders and conditions of probation and include general clean up.

## **Rationale for Modifications to the Disciplinary Guidelines**

### ***Amend the Cover, Table of Contents, Introduction (page i) and Regulatory Authority (page ii)***

These amendments were made to update and clarify the intent of the Guidelines and to accurately reflect the proposed changes to the Guidelines.

### ***Amend Factors To Be Considered (page iii)***

#### **Specific Purpose**

The specific purpose of this amendment is to update and clarify the factors that should be considered in determining whether discipline should be imposed.

#### **Factual Basis**

The Board's highest priority in exercising its licensing, regulatory, and disciplinary actions is protection of the public. To ensure public protection, the Board carefully considers the totality of facts and circumstances for each disciplinary case and the rehabilitation evidence presented by the respondent.

The proposed amendments will facilitate uniformity of disciplinary orders and ensure consistency with the Board's criteria for rehabilitation.

### ***Amend Summary List of the Standard & Optional Conditions of Probation (pages iv - v)***

The summary list of standard & optional conditions of probation was updated and cleaned up to accurately reflect the conditions listed on pages 2-13 of the proposed Guidelines.

### ***Amend Standard Conditions of Probation (pages 1-7)***

#### **1. Obey all Laws**

##### **Specific Purpose**

The specific purpose of this amendment is to clarify the respondent's responsibility to report all violations of any law and to update the fingerprint requirements. It also specifies that any violation of a court order shall be a violation of the respondent's probation conditions.

##### **Factual Basis**

It is the responsibility of all licensees to be lawful. The Board must ensure that the respondent clearly understands that all violations of any law must be reported to the Board and that the respondent must comply with criminal penalties while on probation.

**2. Compliance with Probation Program**

**Specific Purpose**

The specific purpose of this amendment is to clarify the intent of this condition and to clean up language. This amendment moves the requirement to submit written reports to condition 3 as a separate condition. The amendment specifies that successful completion of probation will result in the full restoration of the respondent's license.

**Factual Basis**

The Board must ensure that the respondent clearly understands that s/he is responsible for complying with probation conditions and cooperating with the Board. The amendment provides clarity and makes it known to the respondent the result of full compliance.

**3. Submit Written Reports**

**Specific Purpose**

The specific purpose of this amendment is to clarify the requirements for submission of written reports. The requirement to submit written reports was removed from condition 2 and added as condition 3.

**Factual Basis**

The Board must ensure that the respondent clearly understands the requirements for submission of written reports and information the reports must contain. This condition requires the respondent to include in these reports information regarding licensure in other states or territories and to provide other regulatory agencies with a copy of the Board's decision. This will enhance consumer safety by giving the Board a mechanism to monitor the respondent's licensure status with other agencies and to make other agencies aware of the Board's decision placing the respondent on probation.

**4. Notification of Address and Telephone Number Change(s)**

**Specific Purpose**

The specific purpose of this amendment is to clarify the respondent's responsibility to notify the Board of any change of address or telephone number and to claim all mail sent by the Board. This condition was also renumbered.

**Factual Basis**

To ensure compliance with the Probation Program, the Board must be able to contact the respondent as needed. Therefore, it is essential that the respondent notify the

Board of his/her current address and telephone numbers and to accept all mail from the Board.

**5. Notification of Residency or Practice Outside of State**

**Specific Purpose**

The specific purpose of this amendment is to clarify the status of respondent's probation should the respondent reside or practice outside of the State of California. This amendment clarifies the time in which the respondent must report any change of residency or practice. It also rennumbers the condition.

**Factual Basis**

The Board must ensure that the respondent understands the affect his/her residency or practice outside the State of California will have on his/her probation. If the respondent resides or practices outside of the State, the probation will be automatically extended for the same time period. The respondent may not complete the probation term while residing or practicing in another State. This ensures the Board's ability to fully enforcement its disciplinary order and monitor the respondent while under the Board's purview.

**6. Meetings with Board Representative(s)**

Nonsubstantive changes were made to this condition for clean up purposes.

**7. Notification to Employer(s)**

**Specific Purpose**

This condition was renumbered and was formerly condition 5. The specific purpose of this amendment is to clarify the respondent's responsibility relative to employer notification, performance evaluations, termination or separation of employment, and other employment related matters. It specifies that the respondent must notify the Board within five days if s/he has difficulty securing employer reports.

**Factual Basis**

It is the responsibility of the respondent to inform the Board of his/her employment status. The Board must have the ability to contact the respondent's employer at any time to determine if the respondent is complying with the conditions of probation and that the respondent is practicing safely. This amendment will clarify the respondent's responsibility in obtaining employer involvement in order to comply with the probation program.

**8. Employment Requirements and Limitations**

This condition was renumbered and nonsubstantive changes were made for clean up purposes.

**9. Supervision Requirements**

**Specific Purpose**

The specific purpose of this amendment is to clarify that the respondent must also obtain Board approval of the supervision that will be provided before continuing any employment. This condition was also renumbered.

**Factual Basis**

To ensure that the public is adequately protected, the Board must determine that the respondent is properly supervised while practicing. The existing Guidelines require a respondent to obtain Board approval of the supervision that will be provided before commencing employment. This amendment makes it clear to the respondent that the Board must also approve of the supervision that will be provided before continuing employment should a respondent already be practicing when the Board's decision becomes effective.

**10. Completion of Educational Course(s)**

**Specific Purpose**

The specific purpose of this amendment is to delete the suspension of a respondent's license if s/he fails to enroll and successfully complete required coursework. It clarifies that the respondent must submit an original certificate as proof of completion of a course. It also renumbers the condition.

**Factual Basis**

The Board determined that the suspension of a respondent's license due to his/her failure to comply with probationary coursework requirements within the first year of probation was unreasonable. However, the Board must ensure that adequate proof is submitted by the respondent regarding the completion of required coursework. This amendment clarifies that only original completion certificates are acceptable.

**11. Maintenance of Valid License**

**Specific Purpose**

The specific purpose of this amendment is to clarify that, if the respondent has not been issued a valid license, the probation term will not begin. Further, it clarifies that the respondent must complete the licensure process within two years from the effective date of the Board's decision. The amendment also provides clean up and renumbers the condition.

**Factual Basis**

The Board cannot fully enforce disciplinary orders resulting in probation if the respondent is not licensed by the Board. This amendment prevents a probation term

from starting, when a disciplinary order grants or reinstates a license, until the respondent obtains a valid license from the Board. Standard conditions of probation exist that require a valid license. This amendment ensures that a respondent who still needs to obtain a license at the time the Board's decision is effective will not immediately fail to comply with those conditions.

**12. Cost Recovery Requirements**

**Specific Purpose**

The specific purpose of this amendment is to clarify the respondent's responsibility to pay required costs and his/her ability to establish a payment plan with the Board. The amendment gives the Board discretion to extend the probation period up to one year, without further hearing, if the respondent fails to comply with this condition and presents sufficient proof of his/her good faith effort to pay the costs.

**Factual Basis**

The proposed amendment ensures that the respondent is fully aware of his/her responsibility to pay required costs and the consequences for failure to comply with the condition.

**13. License Surrender**

**Specific Purpose**

The specific purpose of this amendment is to provide a mechanism for the Board to accept a respondent's voluntary surrender of his/her license without further hearing. It makes the respondent aware that s/he may petition the Board for reinstatement of a surrendered license.

**Factual Basis**

Several licensees who are placed on probation by the Board decide that they no longer can or wish to retain their license and want to surrender it to the Board. This amendment will improve efficiency and clarifies for the respondent that the Board can accept a voluntary surrender of a license without proceeding to a hearing.

**14. Violation of Probation**

**Specific Purpose**

The specific purpose of this amendment is to specify that a denial is included as a stayed discipline. It also renumbers the condition and provides clean up.

**Factual Basis**

It is the responsibility of the respondent to be aware of the ramifications for failure to comply with the probation program. This amendment ensures that the respondent is

aware that, in addition to revocation or suspension, the Board may also set aside a stay order imposing a denial.

**Amend Optional Conditions of Probation (pages 8-13)**

**15. Suspension of License**

**Specific Purpose**

The specific purpose of this amendment is to clarify that the Board has the authority to suspend a license and to include the suspension of a license as an optional condition of any disciplinary order.

**Factual Basis**

The Code authorizes the Board to suspend a license as a mode of discipline. In some cases, the public interest might be served best by suspending a license. This amendment will make it clear that suspension of license is a disciplinary option and should be considered.

**16. Examination by a Physician**

This condition was renumbered and nonsubstantive changes were made for clean up and clarity.

**17. Psychiatric/Psychological Evaluation**

This condition was renumbered and nonsubstantive amendments were made for clean up and clarity.

**18. Psychotherapy**

This condition was renumbered and nonsubstantive amendments were made for clean up and clarity.

**19. Rehabilitation Program**

**Specific Purpose**

The specific purpose of this amendment is to specify that the respondent must submit written verification of completion of treatment and the time required to submit such verification. This condition was also renumbered.

**Factual Basis**

The Board must determine if the respondent has fully complied with this condition. This amendment makes it clear to the respondent that it is his/her responsibility to submit written verification of completing a rehabilitation program within 30 days from completion.



**20. Chemical Dependency Support & Recovery Groups**

The specific purpose of this amendment is to make the language consistent with the proposed changes to condition 3 and for clean up.

**21. Abstain from Controlled Substances**

This condition was renumbered. No other changes were made.

**22. Abstain from Use of Alcohol**

This condition was renumbered and nonsubstantive changes were made for clarity.

**23. Submit Biological Fluid Samples**

This condition was renumbered. No other changes were made.

**24. Take and Pass Licensure Examination**

**Specific Purpose**

The specific purpose of this amendment is to clarify the requirements to pass the licensure examination when this condition is imposed.

**Factual Basis**

The proposed amendment ensures that the respondent is fully aware of his/her responsibility to pass the licensure examination within two years from the effective date of the Board's decision and that the respondent may not commence or continue practice until s/he passes the exam. The VN and PT licensure examinations are used to measure minimum level competencies of individuals to practice safely as licensed vocational nurses or psychiatric technicians. This amendment ensures that a respondent will not commence or continue practice without first demonstrating that s/he possesses the knowledge, skills and abilities to practice safely.

**25. Restriction on Licensed Practice**

This condition was renumbered. No other changes were made.

**Amend Violations & Recommended Disciplinary Actions (pages 14-19)**

**Specific Purpose**

The table of Violations & Recommended Disciplinary Actions was updated to accurately reflect the proposed changes to the Guidelines and to add sections 2878(a)(6), 2878.1, 4521(l), and 4521.2 of the Business and Professions Code (Code) which were amended or added to the Code pursuant to SB 358 (Figueroa), Statutes of 2003, Chapter 640.

SB 358 established mandatory reporting requirements for LVNs, PTs and employers of LVNs and PTs. The proposed amendment specifies the maximum, intermediate, and minimum discipline to be considered if a licensee violates these sections. The maximum discipline is revocation. The intermediate discipline is revocation stayed with three years probation and standard conditions 1-14 of the Guidelines. The minimum discipline is revocation stayed with two years probation and standard conditions 1-14 of the Guidelines.

### **Factual Basis**

The proposed amendment ensures that Sections 2878(a)(6), 2878.1, 4521(l), and 4521.2 of the Code are included in the table of Violations and Recommended Disciplinary Actions and makes the language consistent with the proposed changes to the Guidelines.

### **Underlying Data**

Minutes of the September 7, 2007, Board Meeting and Board Meeting Report.

Transcript of the October 11, 2007, Pre-Notice Forum.

### **Business Impact**

The regulation will not have a significant adverse economic impact on businesses.

### **Specific Technologies or Equipment**

These regulations do not mandate the use of special technologies or equipment.

### **Consideration of Alternatives**

No reasonable alternative to the regulations would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

(11/8/07)